

IN THE MATTER OF ARBITRATION BETWEEN	}	
	}	
	}	DECISION AND AWARD
Laporte Federation of Educational Support	}	
Professionals, Local 4810, Education	}	OF
Minnesota, NEA, AFT, AFL-CIO	}	
	}	ARBITRATOR
THE UNION	}	
	}	
and	}	
	}	BMS Case: 06-PA-401
Independent School District #306	}	
Laporte, MN	}	
	}	
THE DISTRICT	}	

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ARBITRATOR: Eugene C. Jensen

DATE AND LOCATION OF HEARING: April 7, 2006  
Independent School District #306  
315 Main Street  
Laporte, Minnesota 56461

POST HEARING BRIEFS RECEIVED: June 9, 2006

REPLY BRIEFS: June 16, 2006

DATE OF AWARD: July 17, 2006

#### ADVOCATES

For the Union: William F. Garber  
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Education Minnesota  
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For the District: Joseph E. Flynn  
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### JURISDICTION

Pursuant to the rules of the Minnesota Bureau of Mediation Services and the Master Contract of the parties, this matter is properly before the Arbitrator.

*Pertinent Contractual Language:*

**Article XI, Grievance Procedure, Section 8, Arbitration Procedures:** In the event that the employee and school board are unable to resolve any grievance, the grievance may be submitted to arbitration as defined herein:

Subd. 8. Jurisdiction: The arbitrator shall have jurisdiction over disputes or disagreements relating to grievances properly before the arbitrator pursuant to the terms of this procedure except management rights delineated in Article IV, Section 1. The jurisdiction of the arbitrator shall not extend to proposed changes in terms and conditions of employment as defined herein and contained in this written Agreement; nor shall an arbitrator have jurisdiction over any grievance which has not been submitted to arbitration in compliance with the terms of the grievance and arbitration procedures as outlined herein, nor shall the jurisdiction of the arbitrator extend to matters of inherent managerial policy, which shall include but are not limited to such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, subcontracting, the organizational structure and selection and direction and number of personnel. In considering any issue in dispute, in his order, the arbitrator shall give full consideration to the statutory right and obligations of the public school board to efficiently manage and conduct its operation within the legal limitation surrounding the financing of such operations.

### WITNESSES FOR THE UNION

Debra Roller, Head Cook

Russ Riley, Field Staff for Education Minnesota, Bemidji Office

Doris Zothman, Teacher Aide, Special Education

Bill Tysver, Bus Driver and Mechanic

Don Robinson, Custodian

Mary Shadrack, School Secretary

Harvey Johnson, Principal, Independent School District 306

WITNESSES FOR THE DISTRICT

Jeff Peura, Superintendent, Independent School District No. 306, Laporte, MN

ISSUE

The District offered the following issue:

Whether or not the school district violated the collective bargaining agreement by its notice of assignment on July 5<sup>th</sup>, 2005, pursuant to Article 8, Section 7 of the collective bargaining agreement.

The Union asked the Arbitrator to formulate the issue after hearing the case.

RELEVANT CONTRACT LANGUAGE

**ARTICLE I  
PURPOSE**

This agreement is entered into between the School Board of Independent School District No. 306, hereinafter referred to as District, and Education Minnesota, Laporte Federation of Educational Support Professionals, Local 4810, hereinafter referred to as the Exclusive Representative, . . . to provide the terms and conditions of employment for all noncertified employees. . . .

**ARTICLE III  
DEFINITIONS**

Section 1. Terms and Conditions of Employment: The term “terms and conditions of employment” means the hours of employment, the compensation therefore, including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage for retired employees or severance pay, and the employer’s personnel policies affecting the working conditions of the employees. “Terms and conditions of employment” is subject to the provisions of PELRA.

## **ARTICLE IV SCHOOL DISTRICT RIGHTS**

Section 1. Inherent Managerial Rights: The parties recognize that the District is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, subcontracting, the organizational structure and direction and number of personnel. Subcontracting may only occur upon the expiration of the term of this Agreement. The District agrees to meet and confer with the Exclusive Representative at least two months prior to the District subcontracting out positions covered by this Agreement.

Section 2. Management Responsibilities: The parties recognize the right and obligation of the District to efficiently manage and conduct the operation of the District within its legal limitations and with its primary obligation to provide educational opportunity for the students of the District.

Section 3. Effect of Laws, Rules and Regulations: The Exclusive Representative recognizes that all employees covered by this Agreement shall perform the services prescribed by the District and shall be governed by the laws of the State of Minnesota, and by school board rules, regulations, directives and orders, issued by properly designated officials of the school district. The Exclusive Representative also recognizes the right, obligation and duty of the school board and its duly designated officials to promulgate rules, regulations, directives and orders from time to time as deemed necessary by the school board insofar as such rules, regulations, directives and orders are not inconsistent with the terms of this Agreement, the laws of Minnesota, federal laws and valid rules, regulations and orders of state and federal agencies. Any provision of this Agreement found to be in violation of any such laws, rules, regulations, directives or orders shall be null and void and without force and effect.

Section 4. Reservation of Managerial Rights: The foregoing enumeration of District rights and duties shall not be deemed to exclude other inherent management rights and management functions not expressly reserved herein, and all management rights and management functions not expressly delegated in this Agreement are reserved to the District.

## **ARTICLE VI EMPLOYMENT PRACTICES**

Section 1. Employment Confirmation: Employees subject to this Agreement will receive confirmation of employment, including applicable conditions as to assignment, classification and benefits as soon as possible after District action to hire. The employee will be notified, in writing, two (2) weeks prior to implementation of any change in assignment initiated by the District after initial

employment, except in cases of emergency. Employment shall continue unless either party initiates resignation, termination for cause, or lay-off, excepting employees may be discharged pursuant to Article VI, Section 5.

Section 2. Work Rules/Job Description: Employees will be subject to the general; work rules/job descriptions as established by the District. Employees will be responsible for the duties and conditions of their jobs described in the staff handbook. The employee shall be responsible for other work rules and/or information as informed by a supervisor.

Section 3. Classification and Certification: There shall be six general classifications of employment. The job classifications shall be Aide, Bus Driver, Drivers-nonschool bus, Food Service Worker, Clerical Worker, and Custodian. . . .

## **ARTICLE VII SENIORITY**

Section 1. Seniority Rights: The District recognizes that the purpose of seniority is to provide a declared policy as to the order of layoff and recall. Employees shall acquire seniority within a classification upon completion of the probationary period as defined in this Agreement. Upon acquiring seniority within a classification, the seniority date shall relate back to the first date of continuous service in the District. If more than one employee commences work on the same date, the employee working the greatest number of hours per day shall be senior. If still tied, a coin flip will determine the most senior.

Section 3. Reductions in Hours and/or Layoffs: When it is determined layoffs or reductions in hours are necessary, layoffs or reduction of hours must be by job classification. At least a two week notice of layoff must be given in writing by the District, except notice must be given no later than the second Monday of August for those employees who will not be hired back for the following school year. Employees with the least seniority within a classification shall be laid off first or have their hours reduced first. If any opening subsequently occurs within that classification or if hours are subsequently restored, the laid off employee with the most seniority within that classification shall be the first recalled, or the employee whose hours were reduced with the most seniority shall have any hours restored. The obligation to recall an employee who has been laid off shall expire at the end of eighteen months from the date of layoff. Employees who are on layoff shall furnish the District with a telephone number and address for the purposes of notification of openings. If the employee elects not to return to work when recalled, or fails to respond to a letter of recall within ten (10) days, that employee shall have no claim to be recalled to work for the District. An exception to this shall be if the offered opening is for fewer hours and/or less pay than the original position in which case the employee shall remain on the recall list.

## **ARTICLE VIII RATES OF PAY/WORK CONDITIONS**

Section 3. Vacations: All employees shall, on a prorated basis equal to their scheduled daily employment, accumulate one vacation day for every twenty days worked. . . . Employees shall be reimbursed at regular pay for all unused vacation days by June 30.

Section 4. Holidays: All employees shall receive nine paid holidays per year on a pro-rata basis equal to their scheduled daily employment. . . .

Section 7. Work Day: The basic work day, exclusive of lunch, shall be prescribed by the District annually prior to July 15 in conformance with current practices and job descriptions applying to such class of employees. The basic workday shall not exceed eight (8) hours and shall provide for paid break time or times, not to exceed two and not to exceed 30 minutes total, to be scheduled with the supervisor.

Subd. 1. Work Week: The basic work week shall be prescribed by the District annually prior to July 15 in conformance with current practices and job descriptions applying to such class of employees. The basic workweek shall not exceed forty (40) hours.

## **ARTICLE IX INSURANCE PROTECTION**

Section 2. Health and Hospitalization Insurance – Single Coverage: The District shall contribute a sum prorated on the average employment of the individual. Full time for health insurance contribution purposes shall be defined as working 8 hours per day during the school year, or the equivalent number of total hours during a calendar year.

## **ARTICLE X LEAVES OF ABSENCE**

Section 1. Sick Leave:

Subd. 1. All employees shall accumulate one sick leave day for every twenty days worked. (For sick leave purposes, a day shall be defined as the number of hours each day regularly scheduled for an employee.)

### **ARTICLE XIII DURATION**

Section 1. Terms and Reopening Negotiations: This Agreement shall remain in full force and effect for a period commencing on its date of execution, through June 30, 2006, and thereafter as provided by PELRA. . . .

Section 2. Effect: This Agreement constitutes the full and complete Agreement between the District and the Exclusive Representative representing the employees under this Agreement. The provisions herein relating to terms and conditions of employment supersede **any** and all prior agreements, resolution, practices, District policies, rules or regulations concerning terms and conditions of employment inconsistent with these provisions.

Nothing in the Agreement shall be construed to obligate the District to continue or discontinue existing or past practices, or prohibit the District from exercising all management rights and prerogatives, except insofar as this exercise would be in express violation of any term or terms of this Agreement or of PELRA.

### **JOINT EXHIBITS**

1. July 1, 2004 through June 30, 2006, Master Contract between the parties.
2. Three documents in a packet:
  - a. Grievance Report Form filed on August 2, 2005.
  - b. September 8, 2005, memo from Doris Zothman, President, Laporte ESP, to Steve Kampfer, School Board Chairman: requesting that the Board hear the grievance mentioned above.
  - c. October 26, 2005, memo from Doris Zothman, President, Laporte ESP, to Steve Kampfer, School Board Chairman, and Jeffrey Peura, Superintendent: notifying them that the Union was proceeding to arbitration.

### **THE UNION'S EXHIBITS**

1. July 5, 2005, memos from the Board of Education to eight different bargaining unit members regarding their work assignments for the 2005 – 2006 school year.
2. July 12, 2005, memos from the Board of Education to Mary Shadrick and Deb Zubke amending their July 5, 2005, assignments.

ARBITRATOR'S NOTE: *Both memos contained the following excerpt:*

After review by the Board at the meeting last evening, it was decided to change you [Mary Shadrick and Deb Zubke] to 7 hours per day, to make it equitable to you both.

3. June 14, 2005, Memorandum of Understanding (MOU) between Independent School District #306 and Laporte Federation of Educational Support Professionals. In addition, several other supporting documents were attached to the MOU.

Whereas; the Laporte Federation of Educational Support Professionals has filed a grievance against District 306 on February 18, 2005 alleging certain violations of the Master Agreement that resulted in a pay reduction for certain employees and sought restoration of the pay lost by all affected employees, and

Whereas; the District has agreed to restore the lost pay for all affected employees;

It is therefore agreed that all affected employees shall receive the restored pay no later than June 30, 2005. It is also agreed that Local #4810 will immediately withdraw the grievance.

ARBITRATOR'S NOTE: *I agree with the District's objection to Union Exhibit 3. I will disregard it in my consideration of the issues at bar.*

4. A document prepared by Doris Zothman (Union witness) to show the differences in Aide assignments between the 2004 – 2005 school year and the 2005 – 2006 school year.
5. August 26, 2003, memo from Board of Education, to Debbie Troxel, RE: 2003-04 Assignment.

*Excerpt from the memo:*

Pursuant to Article VIII, Section 7 of the Master Contract, the following shall constitute your work assignment for the 2003-04 fiscal year.

Work Assignment:

Library/Media Aide – All student contact days 8 hours per day



6. March 7, 2005, Minutes of a Special Meeting of the Board of Education of Independent School District #306.
7. June 13, 2005, Minutes of a Regular Meeting of the Board of Education of Independent School District #306.
8. July 11, 2005, Minutes of a Regular Meeting of the Board of Education of Independent School District #306.

#### THE DISTRICT'S EXHIBIT

1. January 25, 2006, PARA SENIORITY LIST

#### THE UNION'S CASE

##### **Debra Roller testified:**

- She has been the Head Cook at the school for the past twelve years, and her duties have not changed over that time.
- Although she is currently working seven hours a day, in previous years she worked eight hours per day.
- There are two cooks in the District, and the other cook is called the assistant cook.
- Ms. Roller is scheduled from 5:00AM to 12:30PM and the assistant cook is scheduled from 6:00AM to 1:30PM.
- They both take a 30 minute unpaid break each day.
- The District reduced both of the cooks' schedules from 8 to 7 hours per day for the 2005 – 2006 school year.
- Ms. Roller is more senior than the assistant cook.
- Ms. Roller believes that she is qualified to take over the duties of the assistant cook, and that she should have maintained 8 hours per day, with the assistant cook being assigned 6 hours per day.

##### **Russell Riley testified:**

- He is employed as Field Staff for Education Minnesota, and he is assigned to the Bemidji office.

- He has been the staff representative for the Union (Local 4810) for the past 7 years, and he participated in the last 3 rounds of bargaining with the District.
- He believes that Article 7, Section 3, (Reduction in Hours and/or Layoffs) of the Master Contract was violated by the District when it assigned more senior employees to reduced hours of work.

**Doris Zothman testified:**

- She is an 18 year employee of the District.
- She is the President of the Union.
- She has always been a Special Education Aide.
- From 1992 through June of 2005, she worked 7 hours per day.
- Before the beginning of the 2005 – 2006 school year the District reduced her hours to 6 per day.
- She possessed no special training for her job prior to her hire, and subsequent training has occurred through various workshops.
- The nine other aides were all hired without specialized training, and they have also been trained after their initial hire through various workshops.
- There are 3 separate categories of aides: 1) Special Education Aides, 2) Title I Aides, and 3) a Library Aide.
- She identified Union Exhibit 4. A document that she prepared to help her explain the hours of work for the various Aides during the 2004 – 2005 and the 2005 – 2006 school years:

The 2004 – 2005 school year had 9 Aides performing 64 hours of work per day. One employee was assigned 8 hours and the other 8 were all assigned 7 hours per day.

The 2005 – 2006 school year had 10 union-represented Aides performing 60 hours of work per day. All 10 Aides were assigned 6 hours per day.

One 7 hour per day Aide resigned following the 2004 – 2005 school year, and two new Aides were added to the compliment for the 2005 – 2006 school year. Both of the new aides were assigned 6 hour per days.

- She identified Union Exhibit 1 (8 different memos, dated July 5, 2006, to bargaining unit members, from the Board regarding their assignments for the 2005 – 2006 school year).
- She identified Union Exhibit 2 (July 12, 2006, memos to the two clerical staff which revised their July 5, 2006 assignments).
- She identified Union Exhibit 5 (August 26, 2003, memo to Debbie Troxel from the Board of Education in which she is assigned to 8 hours per day as the Library/Media Aide). On July 5, 2005, she was assigned to 6 hours per day.
- She identified Union Exhibit 6 (March 7, 2005, minutes of a special meeting of the School Board). She highlighted the following: “M/S/P Seegmiller, Day to approve with regret, the Resolution for Reducing Non-certified Staff, Russell Doke, Dale Magoon and Debra A. Zubke. Roll call vote. Unanimous.” Doke, a half time custodian, and Magoon, a bus driver, were both terminated, and Zubke, school secretary, was reduced 2/5 time. All three of these actions were effective March 7, 2005.
- She identified Union Exhibit 7 (June 13, 2005, Board meeting minutes reflecting the Board’s approval of the summer layoff list for bargaining unit members, and the attached list).
- She identified Union Exhibit 8 (July 11, 2005, Board meeting minutes reflecting the Board’s approval of the recall list for 2005 – 2006, and the attached list).
- She then interpreted the layoff and recall language of the Master Contract in the same way that Russell Riley had. She proceeded to go through each classification and identify who she thought should have been laid off and/or those that she thought should have had their hours reduced.

**Bill Tysver testified:**

- He is a bus driver and, in addition, he is the District’s bus mechanic. Twenty-nine years as a driver, and a mechanic since 1997.

- He currently drives bus 4 hours per day and performs mechanic duties 4 hours per day.
- From 1997 through September 1, 2003, he drove bus 4 hours per day and performed mechanic duties 7 hours per day (11 hours per day).
- Effective September 1, 2003, his hours were reduced to 4 hours driving and 4 hours of mechanic duties. This was accomplished through a Memorandum of Understanding (MOU) which is part of the Master Contract.
- The MOU also specified his summer schedule: Eight hours per day for forty days.
- His recall notice for the 2005 – 2006 school year changed his summer assignment to twenty days in June, 2006 and twenty days in July, 2006. In addition, his hours per day during the summer were reduced from 8 to 4.
- He doesn't believe it is possible for him to get the buses in proper and legal status with his reduced work schedule. He feels that it would be impossible for him to get them ready for inspection, and that the result might be buses that can't be used by the District.

**Don Robinson testified:**

- He has worked for the Laporte School District for six years.
- He is a custodian and he described his job: cleaning rooms, grounds-keeping, maintenance work, boiler operation, and other miscellaneous duties.
- This year he was assigned seven hours of work per day; last year he was assigned eight hours of work per day.
- There are two other custodians in the District, and he is between them in seniority order. The most senior custodian was assigned eight hours per day last year and this year. The least senior was assigned four hours last year and this year (In addition, the least senior was assigned four hours of bus driving last year and this year: she is an eight hour per day employee). Mr. Robinson was the only custodian that had his hours cut from last year.
- He would like to retain the hour he lost, and he believes that the least senior custodian should have her hours reduced by one hour

per day, rather than his. He is able to perform the duties of the least senior custodian and would prefer extending his shift by one hour, rather than working an additional hour at another time in the day. He would be willing to accept the additional hour at either time in the day.

**Mary Shadrick testified:**

- She has worked as a secretary for the Laporte School District for fourteen years.
- She is responsible for the MARSS reporting system, creating report cards, generating honor rolls, class rank, attendance reporting, truancy reports, issuing detentions for tardiness, creating the school master calendar, billing resident districts for non-resident students, transportation report, phone reception, word processing for the principal, daily bulletin, and other duties.
- She worked eight hours per day from 1997 through 2005. This year she was assigned to seven hours per day. She works with another secretary who is less senior than her. The other secretary also had her hours reduced from eight to seven hours per day.
- Prior to the final assignment letter sent to her and the other secretary (Union Exhibit 2 - July 12, 2005), she was listed for eight hours per day for the 2005 – 2006 school year and the other secretary was listed for six hours per day (Union Exhibit 1 - July 5, 2005).
- Ms. Shadrick would like to return to her previous schedule and work 8 hours per day.

**Harvey Johnson testified:**

- Mr. Johnson is the school principal.
- A teacher by the name of Dawn Austin actually scheduled the aides for the 2005 – 2006 school year, and he gave her the parameters for doing so in August of 2005.
- He told her to follow the contract, and he did not suggest any specific individual hours for the aides.

THE SCHOOL DISTRICT'S CASE**Jeff Peura testified:**

ARBITRATOR'S NOTE: Quotes from Superintendent Peura's testimony were taken from the transcript of the proceeding.

- Superintendent of the District for the past one and one-half years.
- The District was in some financial difficulties when he took over as superintendent: The cost of a vocational building had exceeded estimates by \$300,000. Their audit for the 2003 – 2004 fiscal year showed that they were deficit spending in the amount of \$46,000.
- The District also had a declining enrollment: 365 students in 2000 to 261 in the coming school year (a 104 student loss).
- The District receives approximately \$9,000 per student in aid. The losses from the decrease in enrollment were just shy of \$1,000,000. The District is allowed to spend up to two and one-half percent of its general fund unreserved dollars in deficit spending. Last year the District was \$122,499 deficit spending and went beyond its "statutory operating debt" (S.O.D.) amount by approximately \$65,000. The District was required to submit a recovery plan to the State Department of Education to avoid losing aid.
- Last year the District laid off five and a half people: this included both certified and non-certified staff. In addition, the employees represented by the grievance at bar were (for the most part) reduced one hour per day.
- Title I federal funds need to be spent on Title I programs. You can not spend federal Title I funds in other areas.
- In reviewing Union Exhibit #8, he testified that the aides work closely with the students and that their current hours of work (following the one hour reduction in most of their schedules) better correlates with the hours that the students are in school. If he had laid off the junior aide, he "wouldn't have enough people to work with our students [at] the time that they are in school."
- In regard to the clerical staff, he testified that Mary Shadrick and Deb Zubke "have totally separate job descriptions," and that Zubke could not do her job in six hours per day.

- In regard to the cooks, he testified that “[w]e couldn’t feed our kids and do the job with eight hours for one and six hours for the other.”
- In regard to the custodians, he testified that if they had reduced the four hour per day person to three, rather than the mid-senior full-time custodian from eight to seven, it would not have worked out as well.
- He summed up his reading of the pertinent parts of the labor agreement in this way:

*Article 8, Section 7*

It allowed me to set the workday for each of the employees of the district. We can review our needs annually and make adjustments to our employees’ hours to meet the needs of the district; and also, to protect the district financially. We can’t guarantee somebody seven, eight hours of employment, if we don’t have enough students for them to work with.

*Article 7, Section 3*

I believe that that section is to be used during the school year, as we did in January when we laid off a bus driver and custodian. But we set their minimum workday in July for the next year.

### DISCUSSION AND DECISION

The facts in this case are not in dispute: 1). The District experienced and continues to experience financial problems; and 2) The District, when recalling employees for the 2005 – 2006 school year cut the hours of several employees.

The District argues that it followed Article 8 (Rates of Pay/Work Conditions), Section 7 (Work Day) when it sent out recall notices for the 2005 – 2006 school year. It also argues that the layoff language of Article 7 (Seniority), Section 3 (Reductions in Hours and/or Layoffs) does not apply when the District is recalling employees for the following school year.

The Union agrees with the right of the District to recall employees and determine their work days. The Union, however, argues that the layoff language of Article 7, Section 3 must be followed when any reduction in hours occurs.

The decision of the Arbitrator in this case turns on the interpretation of the collective bargaining agreement. Much has been written about the proper approach in interpreting collective bargaining agreements:

Probably no function of the labor-management arbitrator is more important than that of interpreting the collective bargaining agreement. The great bulk of arbitration cases involve disputes over “rights” under such agreements. In these cases the agreement itself is the point of concentration, and the function of the arbitrator is to interpret and apply its provisions. . . .

An agreement is not ambiguous if the arbitrator can determine its meaning without any other guide than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends. But an agreement is ambiguous if “plausible contentions may be made for conflicting interpretations” thereof.

Frank Elkouri and Edna Asper Elkouri, *How Arbitration Works*, 3<sup>rd</sup> ed. (Washington D. C.: BNA, 1981).

In the instant case, I find the language used in both articles to be clear and unambiguous. Article VII, Seniority, Section 3, Reductions of Hours and/or Layoffs, contains language that is typical of many labor agreements:

When it is determined layoffs or reductions in hours are necessary, layoffs or reduction of hours must be by job classification. . . . Employees with the least seniority within a classification shall be laid off first or have their hours reduced first.

Article VIII, Rates of Pay/Work Conditions, Section 7, Work Day, once again is typical of many labor agreements between school districts and non-certified employees:

The basic work day, exclusive of lunch, shall be prescribed by the District annually prior to July 15 in conformance with current practices and job descriptions applying to such class of employees.

In addition, I do not find language in either article that would nullify the “reduction in hours and layoff” protections at the time of the summer recall (prior to July 15). While it might be possible to read such an interpretation into the Agreement, it is not plausible. If the parties had a *meeting of the minds* regarding such an important interpretation, they surely would have included explicit language in the Agreement. It has been long held that arbitrators should interpret contractual clauses in a way that makes them compatible with the agreement as a whole, not in a way that invalidates other clauses.



The “reduction in hours and layoff” language of the Agreement could be rendered meaningless if the Arbitrator accepted the District’s position in this matter. What would prevent the District from changing the hours of work during the recall period for reasons other than the equitable reduction of hours? What would prevent them from reducing or eliminating an individual employee’s hours, while maintaining the hours of others?

In the instant case, the District did not act in an arbitrary, manipulative or *unfair* manner. To the contrary, I believe they were actually trying to be fair to as many employees as possible. Their attempt to “spread the pain,” however, was not consistent with the provisions of the Agreement. Future concerns about employee scheduling, hours of work, and the resulting enforcement of contractual provisions would be better addressed in negotiations between the parties.

A separate issue arose during the arbitration hearing: the reduction in the summer hours of the bus mechanic, Bill Tysver. Mr. Tysver’s case is different from the rest of the Grievants: 1) he is the only employee in the bus mechanic classification; and 2) the reduction in his hours applied to a period of time that actually followed the arbitration hearing (summer of 2006).

Mr. Tysver received notice that his hours and days of work would be reduced during the summer – a time when he catches up on bus maintenance and prepares for inspections. Mr. Tysver should receive a “reduction in hours” notice from the District two weeks in advance of the reduction. However, due to his single incumbent status, he will not be able to exercise any contractual rights to preserve his hours of work. In essence, the notice will be just that: a notice.

### AWARD

The grievance is sustained. The Grievants, except Mr. Tysver as mentioned above, shall receive back-pay for all hours lost due to the 2005 – 2006 scheduling changes. In addition, the Grievants shall receive additional pro-rated benefits as per the Agreement between the parties. If there are any concerns about implementation of this award, I shall retain jurisdiction for thirty days following the date of this award.

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Eugene C. Jensen  
Arbitrator

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Date